COURT OF APPEALS
DECISION
DATED AND FILED

October 29, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP1721-CR **Cir. Ct. No. 2005CF142**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

FRANK H. RINGLE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for La Crosse County: DENNIS G. MONTABON and RAMONA A. GONZALEZ, Judges. *Affirmed*.

Before Lundsten, Higginbotham and Bridge, JJ.

¶1 PER CURIAM. Frank Ringle appeals a judgment of conviction and an order denying his motion for postconviction relief. We affirm.

¶2 Ringle pled guilty to one count of causing great bodily harm by operation of a vehicle with a detectable amount of a restricted controlled substance in his blood. *See* WIS. STAT. § 940.25(1)(am) (2007-08).[1] Before entering that plea, he moved to suppress his blood test results. The circuit court denied the motion. Ringle filed a postconviction motion arguing several reasons why the suppression decision was in error, and also alleging ineffective assistance of counsel if those issues were held to have been waived earlier. The circuit court denied the postconviction motion.

¶3 Ringle first argues that the circuit court erred by denying the suppression motion without a sufficient evidentiary record. He notes that his postconviction motion alleged that the blood draw was taken without a search warrant and, therefore, the burden was on the State to prove that the search complied with an exception to the warrant requirement. Because the State presented only a lab chemist as a witness, but no testimony about the facts related to the criminal investigation or search, Ringle argues that the State failed to meet its burden.

¶4 We conclude that Ringle waived this argument at the suppression hearing. When the court issued its oral suppression ruling at the evidentiary hearing, the court was clearly relying on information in the police reports that Ringle had attached to his postconviction motion, but which had not been presented by live testimony. However, Ringle did not object at that time. In

[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

addition, Ringle's attorney himself relied on information in the police reports when making his argument on the motion.

¶5 Ringle next argues that, if we hold this argument to be waived, his trial counsel was ineffective. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that such deficient performance prejudiced his defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). We need not address both components of the analysis if defendant makes an inadequate showing on one. ***Id.*** at 697. To demonstrate prejudice, the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. ***Id.*** at 694. A reasonable probability is one sufficient to undermine confidence in the outcome. ***Id.***

¶6 Ringle's ineffective assistance argument is cursory and undeveloped. He does not attempt to explain how the outcome might have been different if his attorney had objected to the State's lack of evidence. He does not argue that the State would have been unable to present live testimony from police officers, or that their testimony would have been different from their reports. Nor does he argue that the State would have been unable to introduce the police reports themselves. Therefore, we conclude that Ringle's claim of ineffective assistance was properly denied without a hearing.

¶7 Ringle next argues that, even if we accept the police reports as a proper factual background for the court's suppression ruling, the facts shown by those reports do not satisfy an exception to the warrant requirement. Because Ringle was arrested shortly after the blood draw, the legal test is whether officers had reasonable suspicion to believe that his blood contained evidence of a crime.

See ***State v. Repenshek***, 2004 WI App 229, ¶¶15-18, 277 Wis. 2d 780, 691 N.W.2d 369.

¶8 Ringle argues that police did not have reasonable suspicion. Although Ringle admitted to police that he smoked marijuana the previous evening, approximately eleven hours before the accident, he argues that, by the time of the blood draw, approximately fifteen hours after his admitted marijuana use, the THC would no longer have been detectable. In other words, he argues that so much time had passed since his use that, at the time of the search, his admission to marijuana use did not add to reasonable suspicion. His argument relies on the testimony of the State's lab chemist that it is not possible to detect THC more than thirteen hours after ingestion. Thus, according to Ringle, the only pertinent fact was that he apparently caused a serious accident by driving erratically after falling asleep at the wheel, and this fact does not supply reasonable suspicion.

¶9 We conclude that police had reasonable suspicion. First, we disagree that Ringle's admitted marijuana use did not add to reasonable suspicion. A reasonable inference from this admission was that Ringle was concerned that a test might reveal the presence of THC, thus suggesting recent marijuana use, and he hoped to explain the marijuana use in a manner suggesting it had no effect on his driving. Second, Ringle fell asleep at the wheel at approximately 8:30 in the morning. This is a time of day when most drivers are well rested. Accordingly, we regard falling asleep at this hour as indicating the possibility that drug use occurred more recently than Ringle admitted to.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.